

Secs. 28-117—28-120. Reserved.

ARTICLE III. SEXUALLY ORIENTED BUSINESSES*

***Editor's note**—Ordinance No. 97-75, § 3, adopted January 15, 1997, did not specifically repeal former Art. III which pertained to Sexually Oriented Businesses; hence the provisions of § 3 of said ordinance has been treated as superseding the provisions of former Art. III. Refer to the Code Comparative Table.

Cross reference—Adult arcades, § 28-81 et seq.

Note—(a) Except as provided in subsection (f) below, the amendments to Article III of Chapter 28 of the Code of Ordinances adopted in Section 3 of this Ordinance shall take effect on the 180th day next following the passage and approval of this Ordinance. All permits issued under Article III of Chapter 28 of the Code of Ordinances prior to the date of passage and approval of this Ordinance shall become void on the effective date. The purpose of this section is to provide for the orderly implementation of this Ordinance insofar as the amendments to Article III of Chapter 28 of the Code of Ordinances adopted in Section 3 of this Ordinance institute new requirements for enterprises permitted prior to the date of passage and approval of such amendments. With respect to enterprises that fail to conform to such requirements, this section is intended to provide an initial period for recoupment of investment, subject to extension as provided in subsection (c) below, and an opportunity to apply for a permit and, if the permit is denied, to initiate judicial review prior to the effective date of this Ordinance.

(b) Any enterprise that on the date of passage and approval of this Ordinance holds a current and valid permit issued under Article III of Chapter 28 of the Code of Ordinances prior to the date of passage and approval of this Ordinance, may operate until the effective date. However, in order to qualify for amortization or for the land use provisions of subsection (e), any such enterprise shall apply for a new permit under Article III of Chapter 28 of the Code of Ordinances as amended by Section 3 of this Ordinance on or before the 45th day next following the date of passage and approval of this Ordinance. Any enterprise that is authorized to operate until the effective date under this subsection must remain at the same location at which it was situated on the date of passage and approval of this Ordinance. Enterprises that hold a permit on the date of passage and approval of this Ordinance and apply for a new permit within 45 days, as provided above, shall be afforded a prorated credit as determined by the director for permit fees previously paid.

(c) The provisions of this subsection (c) shall only be applicable to enterprises that on the date of passage and approval of this Ordinance hold a current and valid permit issued under Article III of Chapter 28 of the Code of Ordinances prior to the date of passage and approval of this Ordinance and that timely apply for a permit within 45 days following the date of passage and approval of this Ordinance under subsection (b), above, and the permit is denied by the director, although an appeal may be pending from the denial. The director shall grant an extension for the continued operation of the enterprise in the event that the owner proves that he will be unable to recoup his investment in the business that was incurred through the date of passage and approval of this Ordinance by the effective date.

In order to secure an extension of time, the owner must submit to the Director a written request for such extension on or before the ninetieth day next following the date of passage and approval of this Ordinance. No application for extension received by Director after that date shall be considered. Such written request shall set forth the following information:

- (1) The amount of the owner's investment in the existing enterprise through the date of passage and approval of this Ordinance;
- (2) The amount of such investment that has been or will be realized through the effective date;
- (3) The life expectancy of the existing enterprise;

- (4) The existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of such lease.

This information shall be supported by relevant documentary evidence such as financial statements and tax records. Copies of such documentary evidence must be attached to the request for extension. No investment that was not incurred by the date of passage and approval of this Ordinance shall be considered.

The Director shall notify an applicant for an extension of time of the time and place of a hearing to be held on such request before the Director or a hearing official that he may designate. After such hearing, the Director or hearing official shall issue a written order on the request for extension. If the owner desires to seek judicial review of the Director's or hearing official's order, he may do so by following the procedure set forth in Section 28-135 of the Code of Ordinances. Extensions that are granted shall specify a date certain for closure, and shall not be valid for operation at any other location.

(d) Existing enterprises that remain in operation pursuant to subsections (b) and (c) shall be not considered as having a permit for purposes of measurement of distances between enterprises as required pursuant to Section 28-125(b)(2) of the Code of Ordinances.

(e) For the purpose of limiting the impact of the amendments adopted in Article III of this Ordinance upon existing businesses, the provisions of Section 28-125(b)(2) of the Code of Ordinances that enterprises be situated 1,000 feet or more from each other shall not be applicable to any enterprise that holds a current and valid permit issued under Article III of Chapter 28 of the Code of Ordinances on the date of passage and approval of this Ordinance, provided that such enterprise makes application for a permit under subsection (b) of this section on or before the 45th day next following passage and approval of this Ordinance, and provided, further, that the application is not denied under any other land use criterion of Article III of Chapter 28 of the Code of Ordinances, Houston, Texas.

(f) The effective date of Section 3 of this Ordinance as provided in subsection (a), above shall only apply with respect to enterprises that on the date of passage and approval of this Ordinance hold a current and valid permit issued under Article III of Chapter 28 of the Code of Ordinances prior to the date of passage and approval of this Ordinance. Any enterprise that does not hold a current, valid permit, including any enterprise for which application is pending but not yet granted or denied on the date of passage and approval of this Ordinance shall be subject to Article III of Chapter 28 of the Code of Ordinances as amended by this Ordinance on such date of passage and approval, and Section 3 of this Ordinance shall be effective immediately upon its passage and approval with respect to any such enterprise. Any permit application currently pending or the denial of which is under appeal to a hearing official shall become invalid immediately upon the date of passage and approval of this Ordinance and shall be returned along with a refund of the application fee to the applicant. Any permit application received after passage and approval of this Ordinance shall be considered by the Director under the criteria set forth in Article III of Chapter 28 of the Code of Ordinances as amended in this Ordinance, provided that any appeal to a hearing official may be heard by a hearing official appointed by the Director until hearing officials referenced under Section 28-125(d) of the Code of Ordinances as amended by this Ordinance are appointed by the mayor and confirmed by the city council. Any enterprise for which an otherwise current and valid permit has been suspended shall be treated as though it had a current and valid permit in the administration of this Section.

Sec. 28-121. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Achromatic. Colorless, lacking in saturation or hue. Without limitation, grays, tans and light earth tones shall be included, but white and black and any bold coloration that attracts attention shall be excluded from the definition of achromatic.

Adult bookstore. An establishment whose primary business is the offering to customers of books, magazines, films or videotapes (whether for viewing off-premises or on-premises by use of motion picture machines or other image-producing devices), periodicals, or other printed or pictorial materials which are intended to provide sexual stimulation or sexual gratification to such

customers, and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities, or specified anatomical areas.

Adult cabaret. An establishment whose primary business is the offering to customers of live entertainment which is intended to provide sexual stimulation or sexual gratification to such customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities, or specified anatomical areas.

Adult encounter parlor. An establishment whose primary business is the provision of premises where customers either congregate, associate, or consort with employees who engage in specified sexual activities with or in the presence of such customers, or who display specified anatomical areas in the presence of such customers, with the intent of providing sexual stimulation or sexual gratification to such customers.

Adult lounge. An adult cabaret, as defined above, which is a permitted or licensed premises, pursuant to the Texas Alcoholic Beverage Code, where alcoholic beverages may be served or sold.

Adult modeling studio. An establishment whose primary business is the provision to customers of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

Adult movie theatre. An establishment, containing a room with tiers or rows of seats facing a screen, or projection area, whose primary business is the exhibition to customers of motion pictures which are intended to provide sexual stimulation or sexual gratification to such customers and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Applicant. The applicant for a permit shall be the intended operator of the enterprise.

Church. A building, whether situated within the city or not, in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

Commercial multi-unit center. A building or structure (including a shopping mall or strip shopping center) containing three or more separate premises, each of which is offered by lease or otherwise for separate occupancy or control and each of which occupies an enclosed area having its own door or entranceway opening onto public property, a public way, or a common area.

Conduct any business in an enterprise. Any person who does any one or more of the following shall be deemed to be conducting business in an enterprise:

- (1) Operates a cash register, cash drawer or other depository on the enterprise premises where cash funds or records of credit card or other credit transactions gener-

ated in any manner by the operation of the establishment or the activities conducted therein are kept;

- (2) Displays or takes orders from any customer for any merchandise, goods, entertainment or other services offered on the enterprise premises;
- (3) Delivers or provides to any customer any merchandise, goods, entertainment or other services offered on the enterprise premises;
- (4) Acts as a door attendant to regulate entry of customers or other persons into the enterprise premises; or
- (5) Supervises or manages other persons in the performance of any of the foregoing activities on the enterprise premises.

Customer. Any person who:

- (1) Is allowed to enter an enterprise in return for the payment of an admission fee or any other form of consideration or gratuity; or
- (2) Enters an enterprise and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or
- (3) Is a member of and on the premises of an enterprise operating as a private club.

Director. The chief of police and such employee(s) of the police department as he may designate to perform the duties of the director under this article.

Display surface. The entire surface of a sign, on one side, devoted to exhibiting advertising. The display surface shall not include the sign frame and incidental supports thereto.

Employee. Any person who renders any service whatsoever to the customers of an enterprise or who works in or about an enterprise and who receives compensation for such service or work from the operator or owner of the enterprise or from the customers therein.

Enterprise. An adult bookstore, adult cabaret, adult encounter parlor, adult lounge, adult modeling studio, adult movie theatre or any establish-

ment whose primary business is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to its customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. The term "enterprise" shall not be construed to include:

- (1) Any business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers performing functions authorized under the licenses held;
- (2) Any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts; or
- (3) Any retail establishment whose major business is the offering of wearing apparel for sale to customers.

Entertainment. Any act or performance, such as a play, skit, reading, revue, pantomime, scene, song, dance, musical rendition or striptease, whether performed by employees, agents, contractors, or customers. The term "entertainment" shall also mean bartenders, waiters, waitresses, or other employees exposing specified anatomical areas or engaging in specified sexual activities in the presence of customers.

Exterior portion. Any part of the physical structure of an enterprise, including a wall, veneer, door, fence, roof, roof covering, or window, which is visible from any public way or public property.

Licensed day-care center. A facility licensed by the State of Texas, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than 12 children under 14 years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

Multifamily tract. Any residential tract that contains any building or buildings or portion or

portions thereof, that is designed, built, rented, leased, sold, let out or hired out to be occupied, or which is occupied, in separate units, each containing living, sleeping and food preparation facilities, as the homes or residences of three or more families, groups, or individuals living independently of each other.

Operator. The manager or other natural person principally in charge of an enterprise.

Owner or owners. The proprietor if a sole proprietorship, all general partners if a partnership, or the corporation and all officers, directors, and persons holding 50 percent or more of the outstanding shares if a corporation.

Permit. A current, valid permit issued by the director pursuant to the terms of this article to an operator for an enterprise.

Public park. A publicly owned or leased tract of land, whether situated in the city or not, designated, dedicated, controlled, maintained and operated for use by the general public for active or passive recreational or leisure purposes by the city or any political subdivision of the state and containing improvements, pathways, access or facilities intended for public recreational use. The term "public park" shall not include parkways, public roads, rights-of-way, esplanades, traffic circles, easements or traffic triangles unless such tracts or areas contain and provide improvements or access to a recreational or leisure use by the public. A current list of public parks shall be compiled and revised by the director of the parks and recreation department and maintained for public inspection in the office of the city secretary.

Residential. Pertaining to the use of land, whether situated within the city or not, for premises such as homes, townhomes, patio homes, manufactured homes, duplexes, condominiums and apartment complexes, which contain habitable rooms for nontransient occupancy and which are designed primarily for living, sleeping, cooking, and eating therein. A premises which is designed primarily for living, sleeping, cooking and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes. Hotels, motels, boarding houses, nursing homes, college or

university dormitories, hospitals, and nursery schools shall not be considered to be residential. The term 'residential' shall also include any unimproved tract designated for tax appraisal purposes as residential by the Harris County Appraisal District if situated in the city or by the appraisal district of the county in which the tract is situated if not situated in the city. The term additionally shall include any tract, that, based upon the records of the planning official has been subdivided or platted for residential use, but that is not yet designated for tax appraisal purposes as residential.

School. A building, whether situated within the city or not, where persons regularly assemble for the purpose of instruction or education together with the playgrounds, stadia and other structures or grounds used in conjunction therewith. The term is limited to:

- (1) Public and private schools used for primary or secondary education, in which any regular kindergarten or grades one through 12 classes are taught; and
- (2) Special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or any of grades one through 12.

Sign. Any display, design, pictorial, or other representation, which shall be so constructed, placed, attached, painted, erected, fastened or manufactured in any manner whatsoever so that the same is visible from the outside of an enterprise and that is used to seek the attraction of the public to any goods, services or merchandise available at such enterprise. The term 'sign' shall also include such representations painted on or otherwise affixed to any exterior portion of an enterprise as well as such representations painted on or otherwise affixed to any part of the tract upon which such an enterprise is situated.

Specified anatomical areas:

- (1) Less than completely and opaquely covered:
 - a. Human genitals, pubic region or pubic hair; or

- b. Buttock; or
 - c. Female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola; or
 - d. Any combination of the foregoing; or,
- (2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities:

- (1) Human genitals in a discernible state of sexual stimulation or arousal; or
- (2) Acts of human masturbation, sexual intercourse or sodomy; or
- (3) Fondling or other erotic touching of human genitals, pubic region or pubic hair, buttock or female breast or breasts; or
- (4) Any combination of the foregoing.

Tract. A contiguous parcel of land under common ownership, whether situated within the city or not.

(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-122. Permit—Required.

(a) It shall be unlawful for any person to own, operate or conduct any business in an enterprise located within the city unless there is a permit for the enterprise.

(b) It shall be unlawful for any person to own, operate, or conduct any business in an enterprise located within the city unless the permit is posted at or near the principal public entrance to the enterprise in such a manner that it will be conspicuous to patrons who enter the premises.

(c) In any prosecution under subsection (a) above, it shall be presumed that there was no permit at the time of the alleged offense, unless a permit was then posted as provided in subsection (b).

(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-123. Same—Applications.

(a) Applications for a permit, whether original or renewal, must be made to the director by the

intended operator of the enterprise. Applications must be submitted by hand delivery by the intended operator to the office of the captain of the vice division of the police department during regular working hours (8:00 a.m. to 4:00 p.m., Monday through Friday, city holidays excepted). Application forms shall be supplied by the director. The intended operator shall be required to give the following information on the application form:

- (1) a. The name, street address (and mailing address if different) and Texas driver's license number of the intended operator;
 - b. The name and street address (and mailing address if different) of the owner(s);
 - (2) The name under which the enterprise is to be operated and a general description of the services to be provided;
 - (3) The telephone number of the enterprise;
 - (4) The address, and legal description of the tract of land on which the enterprise is to be located;
 - (5) If the enterprise is in operation, the date on which the owner(s) acquired the enterprise for which the permit is sought, and the date on which the enterprise began operations as an enterprise at the location for which the permit is sought; and
 - (6) If the enterprise is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the permit). If the expected startup date is to be more than ten days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.
- (b) The application shall be accompanied by the following:
- (1) Payment in full of a fee of:
 - a. Four hundred seventy-five dollars for an original application; or
 - b. Two hundred twenty-five dollars for a renewal application, as applicable, by certified check, cashier's check or money order, which fee shall not be refundable under any circumstances;
 - (2) A certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act (Texas Revised Civil Statutes Annotated, Business and Commerce Code, Chapter 36) if the enterprise is to be operated under an assumed name;
 - (3) If the enterprise is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto;
 - (4) If the enterprise is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
 - (5) If the enterprise is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Revised Limited Partnership Act (Article 6132a-1 Texas Revised Civil Statutes);
 - (6) If the enterprise is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Revised Limited Partnership Act (Article 6132a-1 Texas Revised Civil Statutes);
 - (7) Proof of the current fee ownership of the tract of land on which the enterprise is to be situated in the form of a copy of the recorded deed;
 - (8) If the persons identified as the fee owner(s) of the tract of land in item (7) are not also the owners of the enterprise, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the enterprise to have or obtain the

use and possession of the tract or portion thereof that is to be used for the enterprise for the purpose of the operation of the enterprise;

- (9) Any of items (2) through (8), above shall not be required for a renewal application if the applicant states that the documents previously furnished the director with the original application or previous renewals thereof remain correct and current.

(c) The application shall contain a statement under oath that:

- (1) The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and,
(2) The applicant has read the provisions of this article.

(d) A separate application and permit shall be required for each enterprise.

(e) Each applicant shall, following the filing of the application and payment of the filing fee, place signs (at least 24 inches by 36 inches in size) that provide notification and information specifically stating "SEXUALLY ORIENTED BUSINESS PERMIT APPLICATION PENDING" and the date on which the application was filed along with the notation: "For further information, contact the Vice Division of the Houston Police Department." All lettering on the signs must be at least one and one-half inches by two inches in size for each letter on the sign. It shall be the duty of each applicant as to each particular application to erect at least one such sign along each of the property's public road or highway frontages so as to be clearly visible from the public road or highway. If a property does not have a public road or highway frontage, then signs shall be placed upon the property at a point visible from the nearest public right-of-way. Said signs shall be erected not less than three days after the filing of the application for the sexually oriented business permit and shall be checked daily by the applicant and reposted as required to ensure that they remain posted until the application has been approved or denied.

(f) Every applicant shall give notice of the application by publication at his own expense in two consecutive issues of a newspaper published in Houston, Texas with a daily circulation of not less than 100,000 copies. The notice shall be printed in 10-point boldface type and shall include: (1) the fact that a sexually oriented business permit has been applied for; (2) the street address, including suite or unit number, if any, of the place of business for which the permit is sought; (3) the names of the business and, if the business is operated under an assumed name, the trade name, and (4) if the applicant is a corporation, the names and titles of all officers. The notices shall be published within seven days after the application is filed with the director.

(g) The director shall cause to be prepared and transmitted to the mayor and the city council, with a copy to the city attorney, a monthly report summarizing all applications submitted under this section, and including the name of the proposed enterprise and the street address of the proposed location.

(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-124. Same—Term; renewal.

Each permit shall be valid for a period of one year and shall expire on the anniversary of its date of issuance, unless sooner revoked, or surrendered. Each permit shall be subject to renewal as of its expiration date by the filing of a renewal application with the director. Renewal applications must be filed at least 20 days prior to the expiration date of the permit that is to be renewed.

(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-125. Same—Issuance or denial.

(a) Within 20 days of receipt of any application, either original or renewal, the director shall grant or deny the requested permit and give written notice to the applicant as to the decision, unless such time period is extended at the request of the applicant as provided in subsection (d), below.

(b) The director shall issue a permit to the applicant unless one or more of the following conditions exist:

- (1) The applicant's enterprise is located within 1,500 feet of any school, church, public park, or licensed day-care center. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point on the property line of the applicant's enterprise to the nearest point on the property line of such school, church, public park, or licensed day-care center;
- (2) The applicant's enterprise is located within 1,000 feet of any other enterprise for which there is a permit. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point on the property line of the applicant's enterprise to the nearest point on the property line of any other enterprise;
- (3) Seventy-five percent or more of the tracts within a circular area, as described herein, are residential in character. The radius of such circular area shall be 1,500 feet, and the center of such circular area shall correspond to the midpoint of a line joining the two most distant points on the boundary of the tract on which the enterprise is located; multifamily tracts shall be counted as multiple residential tracts based upon the tax records acreage of the multifamily tract according to the following formula: each one-eighth acre of land or fraction thereof shall be equivalent to one residential tract. For purposes of this calculation a residential tract or multifamily tract shall be considered to be in the circular area in its entirety if any portion of it lies within the circular area;
- (4) The applicant failed to supply all of the information requested on the application;
- (5) The applicant gave materially false, fraudulent or untruthful information on the application;
- (6) The applicant's enterprise is not in compliance with section 28-129 and section

28-130 of this Code (the director may allow any noncompliance with section 28-129 or section 28-130 to be cured during the director's review period established in subsection (d), below, provided that it must be cured before the notice of decision on the permit is issued);

- (7) The application or the enterprise does not meet any other requirement of this article;
- (8) The operator has had a permit revoked for the same enterprise within the 180-day period next preceding the date that the application was filed; or
- (9) The applicant has not demonstrated that the owner of the enterprise owns or holds a lease for the property or the applicable portion thereof upon which the enterprise will be situated or has a legally enforceable right to acquire the same.

(c) Property uses and distances for original applications shall be determined as of the time that the application is filed. If a renewal application is timely filed as provided in section 28-124 of this Code, the property uses and measurements for the renewal application shall be determined as of the time that the original application for the enterprise was filed. If not timely filed, renewal applications shall be subject to the same fees and shall be treated in the same manner in all respects as original applications.

(d) In the event that the director determines that an applicant is not eligible for a permit, the applicant shall be given notice in writing of the reasons for the denial within 20 days of the receipt of its application by the director, provided that the applicant may request, in writing, that such period be extended for an additional period of not more than ten days at any time before the notice is issued in order to make modifications necessary to comply with section 28-129 or 28-130 of this Code. An applicant may appeal the decision of the director regarding such denial by filing a written request for a hearing with the director within 20 days after he is given notice of such denial. The director's decision on the application shall be final unless an appeal is timely filed. An appeal shall not stay the director's decision on the

issuance of a permit. The applicant's written request for a hearing shall set out the grounds on which the denial is challenged. The hearing shall be conducted by a hearing official from a panel of hearing officials, not to exceed ten in number, to be appointed by the mayor and confirmed by the city council. Such hearing officials shall be attorneys licensed to practice law in the State of Texas and shall serve without compensation. Hearings shall be conducted by each hearing official in rotation as appeals are filed. Should the hearing official next in rotation be unavailable or otherwise unable to hear an appeal within the time specified under this section, the hearing official next in order who is available shall be designated to hear such appeal. The hearing official shall not have participated in any investigation or decision relating to the denial of the permit. At the hearing the hearing official shall receive oral and written testimony regarding the application. Hearings shall be conducted under rules issued by the director, which shall be consistent with the nature of the proceedings and shall ensure that each party may present evidence, cross-examine witnesses and be represented by legal counsel.

(e) The hearing official shall conduct the hearing within 20 days after receipt of the applicant's written request for a hearing unless the applicant requests an extension in writing. The hearing official shall render a written decision and issue notice thereof to the applicant within five days after the conclusion of the hearing. The written decision of the hearing official shall be final subject to the provisions of section 28-135 of this Code.

(f) Failure of the director to give timely notice of his action on an application, or failure of the hearing official to timely conduct or give notice of his decision on an appeal from the director's decision shall entitle the applicant to the issuance of a temporary permit upon written demand therefor filed by the applicant with the director unless the delay resulted from a written request for a delay or deferral by the applicant. Such a temporary permit shall only be valid until the third day after the director gives notice of his action on the application or the hearing official gives notice of his decision on the appeal, as applicable.

(g) In any instance in which the applicant's establishment is to be situated within 1,000 feet, as measured hereunder, from another proposed establishment for which a previously filed permit application has been denied, and the previously filed application is still subject to appeals, the director may grant the permit on a conditional basis, subject to the outcome of the appeals on the previous application. A permit so issued may be withdrawn and denied effective upon the third day after notice thereof is given to the operator following the resolution of the appeals on the prior permit. In case of denial the applicant shall have the same rights of appeal hereunder as if the permit had been denied in the first instance.

(h) The provisions of item (2) of subsection (b) of this section, above, shall not be construed to prohibit an enterprise for which there is a permit from relocating to another location situated within 1,000 feet of its existing location, provided that the proposed location complies with all applicable requirements of this article other than its proximity to its own existing enterprise location. An original permit application shall be required to be filed for the proposed relocation, and the director shall conditionally grant the application, if granted, on the stipulation that the permit will not actually be issued until the applicant discontinues operation at its existing location and surrenders the permit for its existing location. Any such relocation must be completed within 180 days from the date that the permit is conditionally granted or the conditional grant of the application will become void. Pending the removal of the enterprise to its new location, both the old and new locations shall be deemed to be operating under a permit for purpose of measurements to locations of other proposed enterprises for which applications may be filed.

(i) In any instance in which the proposed enterprise tract description submitted by an applicant pursuant to section 28-123(b)(4) of this Code, above, for a permit reflects a tract or parcel of land that has resulted from a subdivision of property for which compliance with the applicable subdivision requirements of chapter 42 of this Code was required, and the director determines that the property has not been lawfully subdivided in accordance with chapter 42, then the

director shall cause all measurements and determinations regarding the issuance of the permit to be made on the basis of the parent tract from which the subdivision was made, rather than the subdivided tract.

(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-126. Same—Transfer upon change.

(a) A permit is personal to the owner(s) and the operator designated in the application holds the permit on the owner(s)' behalf as the owner(s)' agent, provided it may be transferred pursuant to this section. A transfer application must be filed by the tenth day next following any change of the owner(s) or operator designated on the application. In the event that a transfer application is not timely filed, then the permit shall be invalid for any purpose relating to the operation of the enterprise, and any transfer shall require the filing of an original permit application and be subject to the regulations applicable thereto. For purposes of measurements between enterprises under section 28-125(b)(2) of this Code, an establishment for which the permit has become invalid by operation of this section shall be treated as though it had a permit until the permit is revoked pursuant to section 28-127 of this Code.

(b) The director shall prescribe a form on which permit transfer applications shall be made. The form shall include a statement under oath that the original application remains correct as previously submitted in all respects except those that are amended hereby. The transfer application shall contain a statement under oath that the individual signing the transfer application has personal knowledge of the information contained therein and that the information is true and correct and shall not be complete unless accompanied by a nonrefundable transfer fee of \$100.00. Transfer applications shall be filed in the same place and at the same time as original applications and the fee shall be payable in the same manner as for original applications, as provided in section 28-123 of this Code.

(c) Transfers shall be reviewed, issued and subject to appeal in the same manner as original applications, pursuant to section 28-125 of this Code, except that items (1), (2), and (3) of subsec-

tion (b) shall not apply, and they shall be issued for the remaining term of the permit to be transferred.

(d) No change in ownership of an enterprise or transfer of a permit for an enterprise shall be allowed during the pendency of any administrative proceeding under section 28-127 of this Code, from the time that any request for revocation or suspension has been filed with the hearing official until the hearing official's order is final. Any such transfer or attempted transfer shall confer no rights whatever in the permit for the enterprise to the putative transferee.

(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-127. Same—Revocation or suspension.

(a) The city attorney shall have the authority to request the revocation of a permit for any one (1) or more of the following reasons:

- (1) The owner or operator of the permitted enterprise knowingly allowed a person under 18 years of age to enter an enterprise;
- (2) The permitted enterprise does not conform to the provisions of section 28-129 and section 28-130 of this Code;
- (3) Three or more cumulative violations of any of the offenses contained in Chapter 21, Chapter 43, Section 22.011, or Section 22.021 of the Texas Penal Code or of the offenses contained in this article or in article VIII of this chapter have occurred on the premises of the permitted enterprise. These violations must have occurred in a consecutive period of 12 months, and the owner, operator or any manager licensed under article VIII of this chapter: (i) knowingly allowed such violations to occur; (ii) did not make a reasonable effort to prevent the occurrence of such violations; or (iii) should have known that such violations were occurring or did occur;
- (4) The operator of the permitted enterprise gave materially false, fraudulent or untruthful information on the original, renewal or transfer application form;

- (5) The enterprise has not been open for business for a period of 30 consecutive days, unless due to circumstances beyond the control of the owner, and the owner is proceeding with due diligence, given all attendant circumstances, to open or reopen the establishment;
- (6) That there was a change of owner or operator for which a transfer application was not timely filed pursuant to section 28-126 of this Code; or
- (7) That the permit was erroneously issued in contravention of the criteria of this article.

(b) The city attorney shall have sole authority to initiate any action for revocation of a permit; provided, that the director may request that the city attorney give priority to any such action based upon the number or nature of violations involving a particular enterprise or enterprises.

(c) The director shall cause to be prepared and transmitted to the mayor and the city council, with a copy to the city attorney, a monthly report summarizing the number and type of violations set forth under subsection (a) of this section for each permitted enterprise. The city attorney shall cause to be prepared and transmitted to the mayor and city council a monthly report summarizing revocation actions filed, currently pending or decided during the reporting period; provided, that the city attorney may withhold from such report any factual information that, in the city attorney's opinion, may tend to compromise any ongoing investigation being conducted under this article or any penal law.

(d) Prior to revocation of a permit, the city attorney, with the assistance of the director, shall investigate the grounds alleged to determine whether probable cause for revocation may exist and, if so, shall notify the owner(s) and operator in writing of reasons for the proposed revocation and grant such owner(s) and operator the opportunity to appear before a hearing official to be designated by the mayor and confirmed by the city council in accordance with the procedures set forth under section 28-125(d) of this Code, at a time and place specified within such notice. The hearing official designated shall not have partic-

ipated in any investigation of the alleged grounds for the revocation. Such hearing shall be held not less than 20 days after the notice is given. Hearings shall be conducted under rules issued by the director. Such rules shall be consistent with the nature of the proceedings and shall ensure that each party may present evidence, cross-examine witnesses and be represented by legal counsel. If, after the hearing, the hearing official finds that the permit should be revoked, he shall issue a written order revoking such permit which shall be effective as provided in section 28-135 of this Code. If the hearing official determines, based upon the nature of the violation, that the ends of justice would be served by a suspension in lieu of a revocation, he may suspend the operation of the permit for a period of time to be stated in the order of suspension, not to exceed two months; however, a suspension may not be ordered if the grounds are based upon item (6) or (7) of subsection (a), above.

(e) An enterprise shall be treated as having a permit for purposes of measurements under section 28-125(b)(2) of this Code, pending the final disposition of any court action involving judicial review of a permit revocation. An establishment holding a suspended permit shall be treated as having a permit for the purpose of measurements made under section 28-125(b)(2) of this Code. (Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-128. Other permit provisions.

(a) A permit is valid only at the location for which it is issued.

(b) It shall be unlawful for any person to counterfeit, forge, change, deface, or alter a permit.

(c) A permit may be canceled upon written request of the owner(s) or operator and surrender of the permit itself to the director. Permits shall be surrendered at the same place and at the same time as provided in section 28-123(a) of this Code. The surrender of a permit shall be effective upon its filing in the office of the captain of the vice division.

(d) A permit shall not constitute authorization to operate the enterprise as an adult arcade or adult mini-theatre as that term is defined in section 28-81 of this Code. Each enterprise that also constitutes an adult arcade or adult mini-theatre shall require an additional permit under article II of this chapter.

(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-129. Exterior portions of enterprises.

(a) It shall be unlawful for an owner or operator of an enterprise to allow the merchandise or activities of the enterprise to be visible from any point outside such enterprise.

(b) It shall be unlawful for the owner or operator of an enterprise to allow the exterior portions of the enterprise to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this article.

(c) It shall be unlawful for the owner or operator of an enterprise to allow exterior portions of the enterprise to be painted any color other than a single achromatic color. This provision shall not apply to an enterprise if the following conditions are met:

- (1) The enterprise is a part of a commercial multi-unit center; and
- (2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the enterprise, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(d) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of an enterprise.

(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-130. Signage.

(a) Notwithstanding chapter 46 of the Building Code or any other city ordinance, code, or regulation to the contrary, it shall be unlawful for the owner or operator of any enterprise or any

other person to erect, construct, or maintain any sign for the enterprise other than one primary sign and one secondary sign, as provided herein.

(b) Primary signs shall have no more than two display surfaces. Each such display surface shall:

- (1) Not contain any flashing lights;
- (2) Be a flat plane, rectangular in shape;
- (3) Not exceed 75 square feet in area; and
- (4) Not exceed ten feet in height or ten feet in length.

(c) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations of any manner, and may contain only:

- (1) The name of the enterprise; and/or
- (2) One or more of the following phrases:
 - a. "Adult bookstore."
 - b. "Adult movie theatre."
 - c. "Adult encounter parlor."
 - d. "Adult cabaret."
 - e. "Adult lounge."
 - f. "Adult novelties."
 - g. "Adult entertainment."
 - h. "Adult modeling studio."

- (3) Primary signs for adult movie theatres may contain the additional phrase, "Movie Titles Posted on Premises."

(d) Each letter forming a word on a primary sign shall be of a solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

(e) Secondary signs shall have only one display surface. Such display surface shall:

- (1) Be a flat plane, rectangular in shape;
- (2) Not exceed 20 square feet in area;
- (3) Not exceed five feet in height and four feet in width; and
- (4) Be affixed or attached to any wall or door of the enterprise.

(f) The provisions of item (1) of subsection (b) and subsections (c) and (d) shall also apply to secondary signs.

(g) Any sign located on the premises of a commercial multi-unit center containing an enterprise that displays the name, or any portion of the name of the enterprise, any name under which any enterprise was formerly operated on the premises, or that contains any of the terms set forth in item (2) of subsection (c) or any other terminology that is commonly used to identify, or is associated with the presence of a sexually oriented business, shall comply with all restrictions of this section. The intent of this subsection is to prevent the use of signage identifying the commercial multi-tenant center itself from being used as a subterfuge to evade the restrictions on sexually oriented business signs set forth in this section.

(Ord. No. 97-75, § 3, 1-15-97; Ord. No. 02-399, § 58, 5-15-02)

Sec. 28-131. Persons younger than eighteen prohibited from entry; attendant required.

(a) It shall be unlawful to allow a person who is younger than 18 years of age to enter or be on the premises of an enterprise at any time that the enterprise is open for business.

(b) It shall be the duty of the operator of each enterprise to ensure that an attendant is stationed at each public entrance to the enterprise at all times during such enterprise's regular business hours. It shall be the duty of the attendant to not allow any person under the age of 18 years to enter the enterprise. It shall be presumed that an attendant knew a person was under the age of 18 unless such attendant asked for and was furnished:

- (1) A valid operator's, commercial operator's, or chauffeur's driver's license; or
- (2) A valid personal identification certificate issued by the Texas Department of Public Safety reflecting that such person is 18 years of age or older.

(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-132. Notices.

(a) Any notice required or permitted to be given by the director or any other city office, division, department or other agency under this article to any applicant, operator or owner of an enterprise may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit, or transfer application which has been received by the director, or any notice of address change which has been received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the director shall cause it to be posted at the principal entrance to the establishment.

(b) Any notice required or permitted to be given to the director by any person under this article shall not be deemed given until and unless it is received in the office of the captain of the vice division at the time(s) and in the manner provided for filing of applications in section 28-123(a) of this Code.

(c) It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the director in writing of any change of residence or mailing address. (Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-133. Penalty.

(a) The violation of any provision of this article, including the doing of anything which is herein prohibited or declared to be unlawful or the failure to do anything or perform any duty which is required herein, shall be punishable as provided by Section 243.010(b) of the Local Government Code, as amended. Each day any violation shall continue shall constitute and be punishable as a separate offense.

(b) The revocation or suspension of any permit shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.

(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-134. Authority to file suit.

The city attorney is hereby authorized to file suit to enjoin the violation of this article.
(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-135. Judicial review.

(a) Any owner, operator, or applicant of an enterprise who is aggrieved by a decision that denies, suspends, or revokes a permit, and who has complied fully and timely with all applicable provisions pertaining to appeals of decisions in this article may seek appropriate judicial relief by writ of mandamus or other available remedy in a court of competent jurisdiction.

(b) The person aggrieved by the decision of the city may seek judicial review of such decision immediately following the decision. The city attorney shall cooperate with the aggrieved party in seeking an expedited disposition of the matter.

(c) The decision of the hearing official suspending or revoking a permit under section 28-127 of this Code shall be final as of the date written notice of the hearing official's decision is given to the owner or operator of the enterprise, but in order to afford the permit holder an opportunity to seek judicial review shall not be effective for purposes of enforcement of the decision by the director until the 20th day following such notice. If the permit holder initiates litigation for the purpose of seeking judicial review within the 20-day period, then the decision shall not be effective for purposes of enforcement prior to the 60th day following such notice. This subsection shall apply only to a decision sustaining the suspension or revocation of a permit for an existing enterprise, and shall not apply to a decision sustaining the denial of an initial application for a proposed enterprise.
(Ord. No. 97-75, § 3, 1-15-97)

Sec. 28-136. Access, visibility, lighting, supervision.

(a) Terms in this section shall be governed by the definitions in section 28-251 of this Code.

(b) It shall be unlawful for any owner, operator or manager of any enterprise to permit any employee to provide any entertainment to any cus-

tomers in any separate area within an enterprise to which entry or access is blocked or obscured by any door, curtain or other barrier, regardless of whether entry to such separate area is by invitation, admission fee, club membership fee or any form of gratuity or consideration.

(c) It shall be the duty of any owner, operator or manager of an enterprise to allow immediate access by any police officer, city fire department official or health officer to any portion of the premises of the enterprise upon request for purpose of inspection of such premises for compliance with this article, or any other applicable law.

(d) Each enterprise shall be equipped with lighting fixtures of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) footcandle as measured at four feet above floor level.

(e) It shall be the duty of any owner, operator or manager of an enterprise to ensure that at least one on-site manager is on duty on the premises at all times during which the enterprise is open for business or during which customers are on the premises.

(f) It shall be the duty of any owner, operator or manager of an enterprise to ensure that all persons acting as managers or entertainers on the premises hold and display permits under article VIII of this chapter, and that entertainers comply with section 28-258 of this Code.

(g) It shall be the duty of the on-site manager to ensure that no entertainer or manager is allowed or suffered to conduct any business on the premises of an enterprise unless the on-site manager thereof has in his possession or control an on-site card, as referenced in section 28-254(d) of this Code for the manager or entertainer. On-site cards shall be made available for immediate inspection by any police officer, fire department official or health officer. Managers or entertainers working at more than one enterprise may retrieve their on-site cards upon departing the premises in order to present them to a manager at any other enterprise where such persons are employed to hold while the manager or entertainer remains on those premises.

(h) It shall be the duty of any owner, operator or manager to maintain a complete list of all persons, including names and addresses, who conduct any business on the premises and are required to obtain a permit under article VIII of this chapter.

(Ord. No. 97-75, § 3, 1-15-97)

Secs. 28-137—28-150. Reserved.

ARTICLE IV. CORRECTIONAL FACILITIES

Sec. 28-151. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Church. A building, whether situated within the city or not, in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

Community center. A community facility, whether situated within the city or not, operated by an association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a state or national organization of like character, or a multiservice center, whether situated within the city or not, operated by the City of Houston Health and Human Services Department or successor department.

Correctional facility. A facility for the housing and rehabilitation or training of adults on parole, early or pre-release, or any other form of executive, judicial or administrative release from a penal institution. Such a facility shall not include a facility which is:

- (1) used primarily as a temporary holding facility,
- (2) used primarily for persons arrested for or found guilty of misdemeanor offenses,
- (3) located in or near court facilities, or
- (4) used primarily to hold prisoners awaiting transfer to a state facility.

Director. The director of the planning and development department and such employee(s) of the planning and development department as s/he may designate to perform the duties of the "director" under this article.

Facility for the elderly. A nursing home for the elderly licensed by the State of Texas, a board and lodging home for senior citizens registered with the State of Texas, or a nutrition site for the elderly operated by the City of Houston, whether situated in the city or not.

Licensed day care center. A facility licensed by the State of Texas, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than 12 children under 14 years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

Operator. The manager or other natural person principally in charge of a correctional facility.

Owner or owners. The proprietor if a sole proprietorship, all general partners if a partnership, the corporation if a corporation, or a governmental entity.

Permit. A current, valid permit issued by the director pursuant to the terms of this article to an operator for a correctional facility.

Planning commission. The planning commission created by chapter 33 of this Code.

Public park or recreation facility. A publicly owned or controlled park or recreation facility operated for the benefit of the general public, whether situated in the city or not, and including but not limited to those park and playground properties placed under the direction and control of the City of Houston Parks and Recreation Department by chapter 32 of this Code.

Residential. Pertaining to the use of land, whether situated within the city or not, for premises such as homes, townhomes, patio homes, manufactured homes, duplexes, condominiums and apartment complexes, which contain habitable rooms for non-transient occupancy and which